

PETITION FOR WRIT OF HABEAS CORPUS: 28 USC §2254 (Rev. 9/10)
ADOPTED BY ALL FEDERAL COURTS IN TEXAS

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

ORIGINAL

IN THE UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF TEXAS

DEPUTY CLERK

BNG

DIVISION

PETITION FOR A WRIT OF HABEAS CORPUS BY
A PERSON IN STATE CUSTODY

Martin LEE KENNEDY
PETITIONER
(Full name of Petitioner)

John Montford unit
CURRENT PLACE OF CONFINEMENT

vs.

#01474898
PRISONER ID NUMBER

Bryant Collier
RESPONDENT
(Name of TDCJ Director, Warden, Jailor, or
authorized person having custody of Petitioner)

5-17CV0063-C
CASE NUMBER
(Supplied by the District Court Clerk)

INSTRUCTIONS - READ CAREFULLY

1. The petition must be legibly handwritten or typewritten and signed and dated by the petitioner, under penalty of perjury. Any false statement of an important fact may lead to prosecution for perjury. Answer all questions in the proper space on the form.
2. Additional pages are not allowed except in answer to questions 11 and 20. Do not cite legal authorities. Any additional arguments or facts you want to present must be in a separate memorandum. The petition, including attachments, may not exceed 20 pages.
3. Receipt of the \$5.00 filing fee or a grant of permission to proceed *in forma pauperis* must occur before the court will consider your petition.
4. If you do not have the necessary filing fee, you may ask permission to proceed *in forma pauperis*. To proceed *in forma pauperis*, (1) you must sign the declaration provided with this petition to show that you cannot prepay the fees and costs, and (2) if you are confined in TDCJ-CID, you must send in a certified *In Forma Pauperis* Data Sheet form from the institution in which you are confined. If you are in an institution other than TDCJ-CID, you must send in a certificate completed by an authorized officer at your institution certifying the amount of money you have on deposit at that institution. If you have access or have had access to enough funds to pay the filing fee, then you must pay the filing fee.

5. Only judgments entered by one court may be challenged in a single petition. A separate petition must be filed to challenge a judgment entered by a different state court.
6. Include all of your grounds for relief and all of the facts that support each ground for relief in this petition.
7. Mail the completed petition and one copy to the U. S. District Clerk. The "Venue List" in your unit law library lists all of the federal courts in Texas, their divisions, and the addresses for the clerk's offices. The proper court will be the federal court in the division and district in which you were convicted (for example, a Dallas County conviction is in the Northern District of Texas, Dallas Division) or where you are now in custody (for example, the Huntsville units are in the Southern District of Texas, Houston Division).
8. Failure to notify the court of your change of address could result in the dismissal of your case.

PETITION

What are you challenging? (Check all that apply)

- ☐ A judgment of conviction or sentence, (Answer Questions 1-4, 5-12 & 20-25)
probation or deferred-adjudication probation.
- ☐ A parole revocation proceeding. (Answer Questions 1-4, 13-14 & 20-25)
- ☒ A disciplinary proceeding. (Answer Questions 1-4, 15-19 & 20-25)
- ☐ Other: _____ (Answer Questions 1-4, 10-11 & 20-25)

All petitioners must answer questions 1-4:

Note: In answering questions 1-4, you must give information about the conviction for the sentence you are presently serving, even if you are challenging a prison disciplinary action. (Note: If you are challenging a prison disciplinary action, do not answer questions 1-4 with information about the disciplinary case. Answer these questions about the conviction for the sentence you are presently serving.) Failure to follow this instruction may result in a delay in processing your case.

1. Name and location of the court (district and county) that entered the judgment of conviction and sentence that you are presently serving or that is under attack: The 403rd Judicial
District Court
Austin, Texas 78701
2. Date of judgment of conviction: Nov 27th, 2007
3. Length of sentence: 40 years Sentence
4. Identify the docket numbers (if known) and all crimes of which you were convicted that you wish to challenge in this habeas action: I am challenging a disciplinary
Conviction. # 20170155398

5. What was your plea? (Check one) ☐ Not Guilty ☐ Guilty ☐ Nolo Contendere
6. Kind of trial: (Check one) ☐ Jury ☐ Judge Only N/A
7. Did you testify at trial? ☐ Yes ☐ No
8. Did you appeal the judgment of conviction? ☐ Yes ☐ No N/A
9. If you did appeal, in what appellate court did you file your direct appeal? N/A

Cause Number (if known): N/A

What was the result of your direct appeal (affirmed, modified or reversed)? N/A

What was the date of that decision? N/A

If you filed a petition for discretionary review after the decision of the court of appeals, answer the following:

Grounds raised: N/A

N/A

Result: N/A

Date of result: N/A Cause Number (if known):

If you filed a petition for a writ of certiorari with the United States Supreme Court, answer the following:

Result: N/A

Date of result: N/A

10. Other than a direct appeal, have you filed any petitions, applications or motions from this judgment in any court, state or federal? This includes any state applications for a writ of habeas corpus that you may have filed. ☐ Yes ☐ No

11. If your answer to 10 is "Yes," give the following information:

Name of court: N/A

Nature of proceeding: N/A

Cause number (if known): N/A

Grounds raised: N/A

Date of final decision: N/A

What was the decision? N/A

Name of court that issued the final decision: N/A

As to any second petition, application or motion, give the same information:

Name of court: N/A

Nature of proceeding: N/A

Cause number (if known): N/A

Date (month, day and year) you filed the petition, application or motion as shown by a file-stamped date from the particular court: N/A

Grounds raised: N/A

Date of final decision: N/A

What was the decision? N/A

Name of court that issued the final decision: N/A

If you have filed more than two petitions, applications or motions, please attach an additional sheet of paper and give the same information about each petition, application or motion.

12. Do you have any future sentence to serve after you finish serving the sentence you are attacking in this petition? ☐ Yes ☐ No N/A

(a) If your answer is "Yes," give the name and location of the court that imposed the sentence to be served in the future: N/A

(b) Give the date and length of the sentence to be served in the future: N/A

N/A

Parole Revocation:

13. Date and location of your parole revocation: N/A
14. Have you filed any petitions, applications or motions in any state or federal court challenging your parole revocation? ☐ Yes ☐ No N/A

If your answer is "Yes," complete Question 11 above regarding your parole revocation.

Disciplinary Proceedings:

15. For your original conviction, was there a finding that you used or exhibited a deadly weapon?
☐ Yes ☒ No
16. Are you eligible for release on mandatory supervision? ☒ Yes ☐ No
17. Name and location of the TDCJ Unit where you were found guilty of the disciplinary violation:
John Montford unit 8602 Peach ST Lubbock TX 79404
Disciplinary case number: # 20170155398,

What was the nature of the disciplinary charge against you? Contraband Sovereign Citizens Material

18. Date you were found guilty of the disciplinary violation: Jan 30, 2017 / Jan 27, 2017

Did you lose previously earned good-time days? ☒ Yes ☐ No

If your answer is "Yes," provide the exact number of previously earned good-time days that were forfeited by the disciplinary hearing officer as a result of your disciplinary hearing:

30 Days

Identify all other punishment imposed, including the length of any punishment, if applicable, and any changes in custody status:

Demoted from S3- To Line 1
30 days Recreation, 30 days Commissary.

19. Did you appeal the finding of guilty through the prison or TDCJ grievance procedure?
☒ Yes ☐ No

If your answer to Question 19 is "Yes," answer the following:

Step 1 Result: Denied

Step 2 Result:

Denied

Date of Result:

2/24/17

All petitioners must answer the remaining questions:

20. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting them.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

- A. **GROUND ONE:** Petitioner denied due process rights of the 8th, 14th Amendment of the United States Constitution

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

ON 1/26/17 Correctional Officer Carlos Martinez falsified a disciplinary case # 2D170155398, against petitioner accusing petitioner of possession of Contraband "Sovereign Citizens Material. when petitioner did not possess said Contraband. The "Sovereign Citizens Material" was received through the

- B. ~~GROUND TWO:~~ John Montford unit Mailroom on 1-24-17 the Sovereign Material was withheld from petitioner and notified by

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Mailroom employee Mrs Logan petitioner had to send the Sovereign Citizens Material back to the Tools of Freedom ISA Company. Petitioner was never in possession of this Sovereign Citizens Material.

C.

~~GROUND THREE:~~ Petitioner denied due process rights of the 8th, 14th, Amendment of the United States Constitution.

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The John Montford unit "D.H.O" disciplinary hearing Officer Capt. Castillo failed to follow fair disciplinary procedures and dismiss petitioners disciplinary case when Carlos Martinez made a contradicting statement at a recorded disciplinary hearing on 1-30-17, stating he did not find petitioner in

D.

GROUND FOUR: possession of Contraband on 1/26/17, Contradicting what he initially written in disciplinary

Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

report # 20170155398, which stated on 1/26/17 at the S.T.G. Office, Petitioner did possess Contraband 26 pages of Sovereign Citizens Material. Said unfair disciplinary case and disciplinary proceedings resulted in petitioner being demoted from S3 - to Line 1 and losing 30 days goodtime, recreation, commissary

21.

Relief sought in this petition: Petitioner is requesting relief from this honorable federal court to reverse disciplinary conviction and restore trusty class and 30 days goodtime credits.

GROUND THREE:

In Sufficient Evidence to Support the finding
Of Guilty And Disciplinary Case.

FACTS SUPPORTING GROUND THREE:

ON 1/31/17, The evidence used to find petitioner
guilty was insufficient because said evidence
"Sovereign Citizens Material" was not found in
the possession of petitioner.

THE Charging instrument the disciplinary Case # report
20170155398, was invalid stating that petitioner
did possess contraband. When petitioner was not
in possession of this Contraband.

Ground four: Correctional Officer Carlos did not attempt
an informal resolution.

22. Have you previously filed a federal habeas petition attacking the same conviction or parole revocation or disciplinary proceeding that you are attacking in this petition? ☐ Yes ☒ No
If your answer is "Yes," give the date on which each petition was filed and the federal court in which it was filed. Also state whether the petition was (a) dismissed without prejudice, (b) dismissed with prejudice, or (c) denied.

If you previously filed a federal petition attacking the same conviction and such petition was denied or dismissed with prejudice, did you receive permission from the Fifth Circuit to file a second petition, as required by 28 U.S.C. § 2244(b)(3) and (4)? ☐ Yes ☐ No N/A

23. Are any of the grounds listed in question 20 above presented for the first time in this petition? ☐ Yes ☒ No

If your answer is "Yes," state briefly what grounds are presented for the first time and give your reasons for not presenting them to any other court, either state or federal.

N/A

24. Do you have any petition or appeal now pending (filed and not yet decided) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," identify each type of proceeding that is pending (i.e., direct appeal, art. 11.07 application, or federal habeas petition), the court in which each proceeding is pending, and the date each proceeding was filed.

N/A

25. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: N/A

(b) At arraignment and plea: N/A

(c) At trial: Substitute Counsel Mrs Pianna Ceja

(d) At sentencing: 8602 Peach ST John Montford unit

(e) ~~Address~~: Lubbock Texas 79404

(f) In any post-conviction proceeding: N/A

Timeliness of Petition:

26. If your judgment of conviction, parole revocation or disciplinary proceeding became final over one year ago, you must explain why the one-year statute of limitations contained in 28 U.S.C. § 2244(d) does not bar your petition.¹

N/A

¹ The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), as contained in 28 U.S.C. § 2244(d), provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for a Writ of Habeas Corpus was placed in the prison mailing system on

3/23/17

(month, day, year).

Executed (signed) on 3/23/17 (date).

Mr. Martin L. Kennedy
Signature of Petitioner (required)

Petitioner's current address: John Montford unit

8602 Peach ST Lubbock Texas 79404

MEMORANDUM Supporting
2254 Writ of Habeas Corpus

Statement of facts

ON 1/24/17, petitioner was sent Sovereign Citizens Material from the tools of freedom ISA Company, which petitioner did not request or Order. The Montford Unit Mailroom employee MRS Logan later informed petitioner he could not receive this Material because said Material was prohibited and petitioner had to send it back to the ISA Company.

ON 1/26/17, STG C.O. Carlos Martinez came to investigate at petitioner Housing area D-3 Pod dayroom and a informal resolution was agreed up not to write disciplinary if petitioner wrote a statement that he did not know Sovereign Citizens Material was Contraband. Petitioner wrote the statement for C.O. Martinez. Later that date of 1/26/17, Petitioner to his surprise received a disciplinary Case # 20170155398, from C.O. Carlos Martinez stating that petitioner was in possession of Contraband 16.0 at the STG office when petitioner did not possess this Sovereign Citizens Material. This Sovereign Citizens Material was Confiscated and received through the incoming United States Mail by Mailroom employee MRS Logan. Petitioner never received this Material. This Material through "Evil intent" was illegally take from the Montford unit Mailroom by C.O. Martinez and photo Copied and written petitioner a bogus disciplinary Case.

Petitioner disciplinary hearing began on 1/27/17, and postponed until 1/31/17. ON the date of the disciplinary hearing C.O. Martinez made it known to the DHO.

Case 5:17-cv-00062-C Document 1 Filed 03/27/17 Page 13 of 15 PageID 13
that he did not find petitioner in possession of Contraband
and that C.O. Martinez illegally took this material from the
Montford Unit Mailroom. The initial disciplinary case # 20170155398
C.O. Martinez had written stated petitioner did possess Contraband
26 pages of Sovereign Citizens material. When C.O. Martinez was
asked at the disciplinary hearing on tape live tape recording
if you found petitioner in possession of Contraband, Mr.
Martinez said "he got the Sovereign material from the
mailroom." Disciplinary hearing Officer Mr. Castillo refused
to dismiss said disciplinary against petitioner based on
this contradiction by C.O. Martinez and that he did not
attempted an informal resolution before writing this
disciplinary case which is a mandatory T.O.C.-J-I rule
policy.

Petitioner was not given a fair and impartial disciplinary
hearing.

Evidence used to find petitioner ^{guilty} was insufficient
to sustain a finding of guilt because the evidence
was not found in petitioner possession.

Argument And Authorities

Petitioner claims the prison disciplinary hearing officer
failed to follow fair procedures and ^{made} unfair disciplinary
discision in finding petitioner guilty for possession of
Contraband. Petitioners 8th, 14th Amendments Constitutional
rights were violated whereas to petitioner did not
receive the procedures laid out in Wolff v. McDonnell,
418 U.S. 539, Sandin v. Conner, 515 U.S. 472, Brown v. Plant
131 Fed 163. Charging Officer did not Attempt an informal
resolution. See Wolff v McDonnell, 418 US 539.

Petitioner claims the document filed 03/27/17 Page 14 of 15 Page 14
in fraction "Possession of Contraband" and Sentence to
the loss of 30 days goodtime Credits petitioner previously
earned toward his release and also petitioner was sentenced
to 30 days recreation, 30 Commissary and reduced from G3 to
Line 1, violating petitioners fourteenth Amendment due process
rights. These procedures were unconstitutional because
the D.H.O. Disciplinary hearing Officer allowed Carlos Martinez
to tell a blatant lie against petitioner for possession of Contra-
band and contradicted himself during petitioners disciplinary
hearing by stating "he did not find petitioner in possession of
contraband" said disciplinary case #20170155398 should have been
dismissed after C.O. Martinez made this contradiction of a
statement. Petitioner was still found guilty of possession of
Contraband. These unfair procedures were unconstitutional
creating a liberty interest and a deliberate indifference.
See Wolff v. McDonnell, 418 U.S. 539, Edwards v. Balisok,
520 U.S. 641, Sandin v. Conner, 515 U.S. 472, 115 S.Ct. 2393
Preiser v. Rodriguez, 411 U.S. 475, 500, 93 S.Ct. 1827.

Petitioner claims the prison disciplinary proceedings that had
deprived him of his goodtime Credits had been invalid because
the decision maker had not been impartial and the defendant's conduct
is shown to be motivated by "Evil Intent", reckless disregard,
callous indifference to petitioners federally protected rights.
See, Siggers-El v. Barlow, 433 F.Supp 2d 811, Edwards v. Balisok,
520 U.S. 641, 117 S.Ct. 1584.

Mr. Martin Lee Kennedy #1444898
8602 Peach St
Montford Unit
Lubbock, TX 79404

Clerk

United States District Court
George H. Mahon Federal Bldg
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